

SENATE BILL No. 491

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-2-5; IC 20-5-2-7; IC 20-10.1-22.4-3; IC 31-9-2-17.5; IC 31-34; IC 31-37; IC 31-39-2-8.5.

Synopsis: Release of information and child safety. Specifies that a state or governmental entity may obtain the release from a law enforcement agency of the limited criminal history of an applicant for employment with the entity. Specifies that a school corporation or special education cooperative may, without charge, obtain the limited criminal history of a prospective employee or adult volunteer from the state police department. Authorizes a school corporation to adopt a policy under which limited criminal history information will be requested concerning each individual hired. Authorizes a school corporation or other entity to which the federal Family Educational and Privacy Rights Act (FERPA) applies to release education records of a child to a juvenile justice agency under certain conditions. Allows a child's school superintendent to have access without a court order to juvenile court records concerning a child who attends or is enrolled in the superintendent's school. Requires a juvenile court to notify a child's superintendent when the juvenile court approves a program of informal adjustment or enters a disposition decree and determines that the child is substantially at risk of committing an act that would be a danger to the child or others.

Effective: Upon passage.

Clark

January 22, 2001, read first time and referred to Committee on Corrections, Criminal and Civil Procedures.



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First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

SENATE BILL No. 491

A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 5-2-5-5, AS AMENDED BY P.L.10-1999,
- 2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 3 UPON PASSAGE]: Sec. 5. (a) Except as provided in subsection (b), on
- 4 request, law enforcement agencies shall release or allow inspection of
- 5 a limited criminal history to noncriminal justice organizations or
- 6 individuals only if the subject of the request:
- 7 (1) has applied for employment with a noncriminal justice
- 8 organization or individual;
- 9 (2) has applied for a license and criminal history data as required
- 10 by law to be provided in connection with the license;
- 11 (3) is a candidate for public office or a public official;
- 12 (4) is in the process of being apprehended by a law enforcement
- 13 agency;
- 14 (5) is placed under arrest for the alleged commission of a crime;
- 15 (6) has charged that his rights have been abused repeatedly by
- 16 criminal justice agencies;
- 17 (7) is the subject of judicial decision or determination with



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respect to the setting of bond, plea bargaining, sentencing, or probation;

(8) has volunteered services that involve contact with, care of, or supervision over a child who is being placed, matched, or monitored by a social services agency or a nonprofit corporation;

(9) has volunteered services at a public school (as defined in IC 20-10.1-1-2) or non-public school (as defined in IC 20-10.1-1-3) that involve contact with, care of, or supervision over a student enrolled in the school;

(10) is being investigated for welfare fraud by an investigator of the division of family and children or a county office of family and children;

(11) is being sought by the parent locator service of the child support bureau of the division of family and children; or

(12) has been convicted of any of the following:

(A) Rape (IC 35-42-4-1), if the victim is less than eighteen (18) years of age.

(B) Criminal deviate conduct (IC 35-42-4-2), if the victim is less than eighteen (18) years of age.

(C) Child molesting (IC 35-42-4-3).

(D) Child exploitation (IC 35-42-4-4(b)).

(E) Possession of child pornography (IC 35-42-4-4(c)).

(F) Vicarious sexual gratification (IC 35-42-4-5).

(G) Child solicitation (IC 35-42-4-6).

(H) Child seduction (IC 35-42-4-7).

(I) Incest (IC 35-46-1-3), if the victim is less than eighteen (18) years of age.

However, limited criminal history information obtained from the National Crime Information Center may not be released under this section except to the extent permitted by the Attorney General of the United States.

(b) A law enforcement agency shall allow inspection of a limited criminal history by and **shall** release a limited criminal history to the following noncriminal justice organizations:

(1) Federally chartered or insured banking institutions.

(2) Officials of state and local government for **any of the purpose of following purposes:**

(A) Employment ~~and~~ **with a state or local governmental entity.**

(B) Licensing.

(3) Segments of the securities industry identified under 15 U.S.C. 78q(f)(2).

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(c) Any person who uses limited criminal history for any purpose not specified under this section commits a Class A misdemeanor.

SECTION 2. IC 5-2-5-13, AS AMENDED BY P.L.10-1999, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 13. (a) The department may not charge a fee for responding to a request for the release of a limited criminal history record if the request is made by a nonprofit organization that:

- (1) has been in existence for at least ten (10) years; and
- (2) either:

- (A) has a primary purpose of providing an individual relationship for a child with an adult volunteer if the request is made as part of a background investigation of a prospective adult volunteer for the organization; or

- (B) is a home health agency licensed under IC 16-27-1.

(b) The department may not charge a fee for responding to a request for the release of a limited criminal history record made by the division of family and children or a county office of family and children if the request is made as part of a background investigation of an applicant for a license under IC 12-17.2 or IC 12-17.4.

(c) The department may not charge a fee for responding to a request for the release of a limited criminal history if the request is made by a school corporation (as defined in IC 20-10.1-1-1), **special education cooperative (as defined in IC 20-1-6-20)**, or non-public school (as defined in IC 20-10.1-1-3) as part of a background investigation of an **employee or** adult volunteer for the school corporation, **special education cooperative**, or non-public school.

SECTION 3. IC 20-5-2-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. (a) A school corporation, **including a school township**, shall adopt a policy concerning criminal history information for individuals who:

- (1) apply for:
 - (A) ~~noncertificated~~ employment with the school corporation; or
 - (B) employment with an entity with which the school corporation contracts for services; or
- (2) seek to enter into a contract to provide services to the school corporation;

if the individuals are likely to have ~~direct, ongoing~~ contact with children ~~within the scope of the individuals' employment. enrolled in the school corporation.~~

(b) A school corporation, **including a school township**, shall administer a policy adopted under this section uniformly for all

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individuals to whom the policy applies. A policy adopted under this section may require any of the following:

(1) The school corporation, **including a school township**, may request, **without the consent of the applicant**, limited criminal history information concerning each applicant for noncertificated employment **or certificated employment** from a local or state law enforcement agency before ~~or~~ **the applicant has contact with children enrolled in the school corporation** but not later than three (3) months after the applicant's employment by the school corporation.

(2) **Each individual hired for noncertificated employment or certificated employment may be required to provide written consent for the school corporation to request limited criminal history information concerning the individual from a local or state law enforcement agency before the applicant's employment by the school corporation.**

(3) Each individual hired for noncertificated employment **or certificated employment** may be required at the time the individual is hired to submit a certified copy of the individual's limited criminal history (as defined in IC 5-2-5-1(1)) to the school corporation.

~~(3)~~ (4) Each individual hired for noncertificated employment **or certificated employment** may be required at the time the individual is hired **but before the individual has contact with children enrolled in the school corporation** to:

(A) submit a request to the Indiana central repository for limited criminal history information under IC 5-2-5;

(B) obtain a copy of the individual's limited criminal history; and

(C) submit to the school corporation the individual's limited criminal history and a document verifying a disposition (as defined in IC 5-2-5-1(6)) that does not appear on the limited criminal history.

~~(4)~~ (5) Each applicant for noncertificated employment **or certificated employment** may be required at the time the individual applies to answer questions concerning the individual's limited criminal history. The failure to answer honestly questions asked under this subdivision is grounds for termination of the ~~noncertificated~~ employee's employment.

(c) If an individual is required to obtain a limited criminal history under this section, the individual is responsible for all costs associated with obtaining the limited criminal history.

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(d) Information obtained under this section must be used in accordance with IC 5-2-5-6.

SECTION 4. IC 20-10.1-22.4-3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 3. (a) A school corporation or other entity to which the education records privacy provisions of the federal Family Educational and Privacy Rights Act (20 U.S.C. 1232g) apply may disclose or report on the education records of a child, including personally identifiable information contained in the education records, without the consent of the child's parent, guardian, or custodian, under the following conditions:**

(1) The disclosure or reporting of education records is made to a state or local juvenile justice agency (as defined in IC 5-2-5.1-6).

(2) The disclosure or reporting relates to the ability of the juvenile justice system to serve, before adjudication, the student whose records are being released.

(3) The juvenile justice agency (as defined in IC 5-2-5.1-6) receiving the information certifies, in writing, to the entity providing the information that the agency or individual receiving the information has agreed not to disclose the information to a third party, other than another juvenile justice agency, without the consent of the child's parent, guardian, or custodian.

(b) For purposes of subsection (a)(2), a disclosure or reporting of education records concerning a child who has been adjudicated as a delinquent child shall be treated as related to the ability of the juvenile justice system to serve a child before adjudication if the juvenile justice agency (as defined in IC 5-2-5.1-6) seeking the information provides sufficient information for the keeper of the education records to determine that the juvenile justice agency seeks the information in order to identify and intervene with a juvenile at risk of delinquency, rather than to obtain information solely related to supervision of the adjudicated delinquent child.

SECTION 5. IC 31-9-2-17.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 17.5. "Child's superintendent", for purposes of IC 31-34, IC 31-37, and IC 31-39, means the superintendent or the designee of a superintendent of a:**

(1) state institution providing elementary or secondary education;

(2) school corporation;



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1 **(3) public school special education cooperative; or**
 2 **(4) nonpublic elementary or secondary school accredited**
 3 **under IC 20-1-1-6 or recognized under IC 20-1-1-6.2;**
 4 **that a child is attending or in which a child is enrolled.**

5 SECTION 6. IC 31-34-8-10 IS ADDED TO THE INDIANA CODE
 6 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE
 7 UPON PASSAGE]: **Sec. 10. If:**

8 **(1) a juvenile court approves the implementation of informal**
 9 **adjustment for a child; and**
 10 **(2) the child is substantially at risk of committing a delinquent**
 11 **act that would be a danger to the child or another person, as**
 12 **determined under criteria set in a community services plan**
 13 **for early intervention services developed under IC 31-34-24;**
 14 **the juvenile court shall notify the child's superintendent in writing**
 15 **within seven (7) days after the entry of the order. The notification**
 16 **must identify the facts that form the basis of the determination and**
 17 **the disposition by the juvenile court, including any parental**
 18 **participation in the disposition ordered by the juvenile court.**
 19 **Information provided to the child's superintendent may be used by**
 20 **the child's superintendent only in furtherance of determining and**
 21 **developing programs to address the child's educational needs.**

22 SECTION 7. IC 31-34-20-7 IS ADDED TO THE INDIANA CODE
 23 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE
 24 UPON PASSAGE]: **Sec. 7. If:**

25 **(1) a juvenile court adjudicates a child to be a child in need of**
 26 **services; and**
 27 **(2) the child is substantially at risk of committing additional**
 28 **acts that would be a danger to the child or another person, as**
 29 **determined under criteria set in a community services plan**
 30 **for early intervention services developed under IC 31-34-24;**
 31 **the juvenile court shall notify the child's superintendent in writing**
 32 **within seven (7) days after the entry of the order. The notification**
 33 **must identify the facts that form the basis of the adjudication and**
 34 **the disposition by the juvenile court, including any parental**
 35 **participation in the disposition ordered by the juvenile court.**
 36 **Information provided to the child's superintendent may be used by**
 37 **the child's superintendent only in furtherance of determining and**
 38 **developing programs to address the child's educational needs.**

39 SECTION 8. IC 31-37-9-11 IS ADDED TO THE INDIANA CODE
 40 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE
 41 UPON PASSAGE]: **Sec. 11. If:**

42 **(1) a juvenile court approves the implementation of informal**

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adjustment for a child; and

(2) the child is substantially at risk of committing additional acts that are a danger to the child or another person, as determined under criteria set in a community services plan for early intervention services developed under IC 31-37-24; the juvenile court shall notify the child's superintendent in writing within seven (7) days after the entry of the order. The notification must identify the delinquent acts that the child committed and the disposition by the juvenile court, including any parental participation in the disposition ordered by the juvenile court. Information provided to the child's superintendent may be used by the child's superintendent only in furtherance of determining and developing programs to address the child's educational needs.

SECTION 9. IC 31-37-19-28 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 28. If:

(1) a juvenile court adjudicates a child as a delinquent child; and

(2) the child is substantially at risk of committing additional acts that are a danger to the child or another person, as determined under criteria set in a community services plan for early intervention services developed under IC 31-37-24; the juvenile court shall notify the child's superintendent in writing within seven (7) days after the entry of the order. The notification must identify the delinquent acts that the child committed and the disposition by the juvenile court, including any parental participation in the disposition ordered by the juvenile court. Information provided to the child's superintendent may be used by the child's superintendent only in furtherance of determining and developing programs to address the child's educational needs.

SECTION 10. IC 31-39-2-8.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8.5. (a) The records of the juvenile court concerning a particular child are available without a court order to a child's superintendent.

(b) Records or copies of records delivered to a child's superintendent, including required notices to a child's superintendent, must be delivered in an envelope that:

(1) is marked as confidential; and

(2) bears a legend that identifies the envelope as containing records that are to be maintained as confidential records.

(c) A child's superintendent who receives a record of the

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1 juvenile court under this section may use the record only in
2 furtherance of determining and developing programs to address
3 the child's educational needs.

4 SECTION 11. An emergency is declared for this act.

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